

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Abimael Ortiz Hernandez

Plaintiff,

v.

U.S. DEPARTMENT OF STATE

2201 C Street, N.W.

Washington, D.C. 20520;

MICHAEL R. POMPEO, in his official

capacity as U.S. Secretary of State,

U.S. DEPARTMENT OF STATE,

600 19th Street, N.W.

Washington, D.C. 20522;

WILLIAM BARR, in his official

capacity as Attorney General of the

United States, U.S. DEPARTMENT

OF JUSTICE,

950 Pennsylvania Avenue, N.W.

Washington, D.C. 20530;

CARRIE CABELKA, in her official

capacity as Assistant Secretary of the

Bureau of Administration, U.S.

DEPARTMENT OF STATE,

2201 C Street, N.W.

Washington, D.C. 20520;

LORI HARTMANN, in her official

capacity as Appeals Officer of the Office

of Information Programs and Services,

U.S. DEPARTMENT OF STATE,

600 19th Street, N.W.

Washington, D.C. 20522;

Defendants.

Civil Action No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Abimael Ortiz Hernandez, Plaintiff, by and through his undersigned counsel hereby allege as follows:

This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from plaintiff, Mr. Abimael Ortiz Hernandez (“Mr. Ortiz”) by the Defendant, the U.S. Department of State (“DOS”) and its officers.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue lies in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).
3. Plaintiff seeks declaratory relief under 28 U.S.C. §§ 2201-2202 and Rule 57 of the Federal Rules of Civil Procedure.

PARTIES

4. The Plaintiff, Mr. Ortiz, was born in 1971 and is a citizen and native of Mexico. He currently resides in Mexico. Plaintiff is the requester of the records being improperly withheld by the Defendant U.S. Department of State.
5. The Defendant, the U.S. Department of State (“DOS”), is an agency of the Executive Branch of the United States Government. DOS is an agency within the meaning of 5 U.S.C. § 552(f)(1). DOS has possession, custody, and control of records to which the Plaintiff seeks access.

STATEMENT OF FACTS

6. On October 23, 2018, Attorney Jan Pederson of Maggio Kattar Nahajzer + Alexander, P.C., counsel for Plaintiff Mr. Ortiz, transmitted via Fax a request to the DOS on behalf of Plaintiff requesting “all records pertaining to Abimael ORTIZ HERNANDEZ” along a timeframe of “All records (January 2008 to the present)” with an indication that Maggio Kattar Nahajzer + Alexander, P.C. was willing to pay any fees associated with the request. A signed Third Party Authorization Letter was transmitted with the FOIA request.
7. On or about October 25, 2018, Attorney Pederson received a letter from Defendant DOS that acknowledged receipt of Plaintiff’s FOIA request. The letter assigned the request Case Control Number F-2019-00740.
8. Pursuant to 5 U.S.C. § 552(a)(6)(A), Defendant DOS was required to respond to Plaintiff’s FOIA request within twenty (20) working days from receipt of the FOIA request, or by November 22, 2018.
9. On or about February 14, 2019, Plaintiff received a response from the DOS noting that the DOS located 42 documents, totaling 94 pages, relevant to the FOIA Request. However, only two documents, totaling 8 pages in entirety and 3 pages in part, were released to Plaintiff. This limited release was based on a determination that the remaining documents were exempt pursuant to 5 U.S.C. § 552(b)(3) and 8 U.S.C. § 1202(f).
10. Plaintiff had ninety (90) days from the issuance of the response on February 14, 2019, or until May 15, 2019, to appeal this determination. Plaintiff timely appealed the determination on May 3, 2019.

11. In a letter dated May 15, 2019, Plaintiff received notice that the filed Appeal had been received by the Chairman of the Department's Appeals Review Panel on May 3, 2019.
12. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), the DOS had twenty (20) working days, or until May 31, 2019 to make a determination with respect to the appeal.
13. As of September 24, 2019, no further response from DOS has been received regarding this appeal by either Plaintiff or Plaintiff's counsel, Attorney Pederson. Defendant DOS has failed to produce any further response nor determination following the appeal.
14. As of the filing of this complaint, the FOIA Request Appeal has been pending for 144 days.
15. Because Defendant DOS has failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A)(ii), Plaintiff is deemed to have exhausted any and all administrative remedies with respect to his FOIA request. *See* 5 U.S.C. § 552(a)(6)(C).

CAUSES OF ACTION

COUNT I

Violation of FOIA, 5 U.S.C. § 552, for Failure to Comply with Statutory Deadlines

16. Plaintiff realleges paragraphs 1 through 15 as if fully stated herein.
17. Defendant has violated the FOIA by failing to respond to Plaintiff's FOIA Appeal request within the twenty (20) day time period set forth in 5 U.S.C. § 552(a)(6)(A)(ii).

COUNT II

Violation of FOIA, 5 U.S.C. § 552, for Unlawful Withholding of Agency Records

18. Plaintiff realleges paragraphs 1 through 15 as if fully stated herein.
19. The FOIA Request properly seeks records within the possession, custody, and/or control of the Defendant DOS under FOIA.

20. Defendant DOS has violated the FOIA by failing to provide access to or copies of records responsive to Plaintiff's FOIA Request. 5 U.S.C. § 552(a)(3)(A).


PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Order Defendant to respond to the FOIA Request Appeal and to immediately disclose in their entirety all records responsive to the Request that are not specifically exempt from disclosure under FOIA, to segregate and release parts of the record that cannot be released in their entirety, and to release a *Vaughn* index of any responsive records withheld under claim of exemption;
- B. Issue a declaration that Plaintiffs are entitled to disclosure of the requested records and enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request;
- C. Award Plaintiffs reasonable attorney fees and costs reasonable incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- D. Grant such other relief as the Court may deem just and proper.

Dated: September 24, 2019

Respectfully submitted,



Jan Pederson